

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DWIGHT ERIC PICKETT,

Defendant-Appellant.

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UNPUBLISHED

October 3, 2006

No. 262668

Wayne Circuit Court

LC No. 04-006543-01

Before: Borrello, P.J., and Jansen and Cooper, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of operating a motor vehicle while under the influence of liquor (OUIL) causing death, MCL 257.625(4). Pursuant to MCL 769.10, defendant was sentenced as a second habitual offender to eight to 15 years in prison. He appeals as of right. We affirm. This appeal is being decided without oral argument. MCR 7.214(E).

This case arises from a collision that took place when defendant turned his car in front of an oncoming motorcycle, which was driven by victim Rodney Clark. The evidence showed that defendant smelled of intoxicants and had slurred speech and bloodshot eyes at the accident scene. An eyewitness recounted observing defendant's vehicle stopped to allow oncoming traffic to clear before turning left. However, according to the witness, defendant then turned directly in front of an oncoming motorcycle. The witness testified that the victim attempted to brake and "had to lay the bike down." The witness elaborated that the motorcycle driver "kind of slid his bike down and the car just ran right into the bike."

A police officer specializing in accident reconstruction opined that the motorcycle slid along the roadway for 61 feet before being struck by defendant's car. The expert estimated that the motorcycle was traveling between 32 and 48 miles per hour<sup>1</sup> when it hit the pavement and started sliding. The parties stipulated to admission of a report indicating that defendant's blood alcohol level was .08 grams per hundred milliliters, the level at or beyond which persons may not lawfully operate motor vehicles. MCL 257.625(1)(b).

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<sup>1</sup> The speed limit at the accident site was 35 miles per hour.

Defendant wished to present evidence that the victim lacked a license to operate his motorcycle and that the victim was driving without prescription eyeglasses. The trial court disallowed such evidence as untimely offered. Defendant's sole argument on appeal is that the trial court thereby denied him the right to present a defense.

A criminal defendant has a constitutional right to present a defense. *People v Hayes*, 421 Mich 271, 278; 364 NW2d 635 (1984). However, that right is not absolute. *Id.* at 279. "The accused must still comply with 'established rules of procedure and evidence designed to assure both fairness and reliability in the ascertainment of guilt and innocence.'" *Id.*, quoting *Chambers v Mississippi*, 410 US 284, 302; 93 S Ct 1038; 35 L Ed 2d 297 (1973).

We review de novo whether a defendant was denied the right to present a defense. *People v Kurr*, 253 Mich App 317, 327; 654 NW2d 651 (2002). However, the decision to admit evidence is within the trial court's sound discretion, and will not be disturbed absent an abuse of that discretion. *People v McDaniel*, 469 Mich 409, 412; 670 NW2d 659 (2003). An abuse of discretion occurs only where an action is so violative of fact and logic as to constitute perversity of will or defiance of judgment. *People v Laws*, 218 Mich App 447, 456; 554 NW2d 586 (1996).

The defense indicated in the course of discovery that it intended to present the evidence in question. However, the defense waited to formally request admission of the evidence until after the close of the prosecution's proofs. The trial court was clearly displeased by the timing of this request.

In prosecuting a case of OUIL causing death, the prosecution must prove that the operation of the motor vehicle caused a death and that the operator was intoxicated. *People v Schaefer*, 473 Mich 418, 422; 703 NW2d 774 (2005). However, the prosecution need not prove that the defendant's intoxication factored into the causation. *Id.*

[I]n examining the causation element of OUIL causing death, it must first be determined whether the defendant's operation of the vehicle was a factual cause of the victim's death. If factual causation is established, it must then be determined whether the defendant's operation of the vehicle was a proximate cause. In doing so, one must inquire whether the victim's death was a direct and natural result of the defendant's operation of the vehicle and whether an intervening cause may have superseded and thus severed the causal link. While an act of God or the *gross* negligence or intentional misconduct by the victim or a third party will generally be considered a superseding cause, *ordinary* negligence by the victim or a third party will not be regarded as a superseding cause because ordinary negligence is reasonably foreseeable. [*Id.* at 438-439 (emphases in the original).]

Defendant does not dispute that if he had not been driving, the accident would not have taken place. Instead, he suggests that the victim's own decision to drive his motorcycle while unlicensed and unaided by corrective lenses constituted an intervening cause of the accident. We

disagree. We conclude as a matter of law that the evidence defendant wished to present could not have established that the victim's own conduct was an intervening cause of the accident.<sup>2</sup>

Although the Supreme Court has held that "the fact that a person has violated the motorcycle licensing statute may be used as evidence of negligence," it cautioned that "relevance must be specifically established." *Klanseck v Anderson Sales & Service, Inc.*, 426 Mich 78, 87; 393 NW2d 356 (1986). In this case, there was no independent evidence that the victim was operating his motorcycle unskillfully or negligently, but for possibly exceeding the speed limit in a nominal manner. Therefore, the victim's lack of a motorcycle endorsement was not relevant to establishing a causal connection between the victim's conduct and the accident. See *id.* at 89-90.

Concerning the victim's decision to drive without prescription eyeglasses, defendant does not suggest that the victim was so deficient in vision that he could not have operated the motorcycle safely without corrective lenses. Nor does defendant point to any evidence that the victim was unable to drive safely, or that he failed to see and respond to defendant's car within a reasonable time. In light of the lack of any such evidence, the victim's decision to drive without corrective lenses could constitute nothing greater than ordinary negligence.

The evidence that defendant wished to present was legally insufficient to establish that the victim committed gross negligence or that the victim's conduct otherwise proximately caused the accident. Accordingly, the victim's own conduct was not an intervening cause of the accident, *Schaefer, supra* at 438-439, and evidence of that conduct would not have been decisive to the outcome of this case. The trial court did not abuse its discretion in disallowing the evidence, *Bahoda, supra* at 288, nor did it deny defendant the right to present a defense, *Hayes, supra* at 278-279.

Affirmed.

/s/ Stephen L. Borrello  
/s/ Kathleen Jansen  
/s/ Jessica R. Cooper

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<sup>2</sup> We will not reverse when the trial court has reached the correct result, albeit for the wrong reasons. *People v Brake*, 208 Mich App 233, 242 n 2; 527 NW2d 56 (1994).